1987 WASH. LAWS, 2ND EX. SESS. CH. 3

BUSINESS AND OCCUPATION TAX– MULTIPLE ACTIVITIES–TAX CREDITS

AN ACT Relating to business and occupation taxation of multiple activities; amending RCW 82.04.440; creating new sections; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. The legislature finds that the invalidation of the multiple activities exemption contained in RCW 82.04.440 by the United States Supreme Court now requires adjustments to the state's business and occupation tax to achieve constitutional equality between Washington taxpayers who have conducted and will continue to conduct business in interstate and intrastate commerce. It is the intent of this act to preserve the integrity of Washington's business and occupation tax system and impose only that financial burden upon the state necessary to establish parity in taxation between such taxpayers.

Thus, this act extends the system of credits originated in RCW 82.04.440 in 1985 to provide for equal treatment of taxpayers engaging in extracting, manufacturing or selling regardless of the location in which any of such activities occurs. It is further intended that RCW 82.04.440, as amended by section 2 of this act, shall be construed and applied in a manner that will eliminate unconstitutional discrimination between taxpayers and ensure the preservation and collection of revenues from the conduct of multiple activities in which taxpayers in this state may engage.

Sec. 2. Section 82.04.440, chapter 15, Laws of 1961 as last amended by section 1, chapter 190, Laws of 1985 and RCW 82.04.440 are each amended to read as follows:

(1) ((~~Except as provided in subsections (2) and (3) of this section,~~)) Every person engaged in activities which are

within the purview of the provisions of two or more of sections RCW 82.04.230 to 82.04.290, inclusive, shall be taxable under each paragraph applicable to the activities engaged in.

(2) Persons taxable under RCW 82.04.250 or 82.04.270 shall ((~~not be taxable under RCW 82.04.230, 82.04.240, or subsection (2), (3), (4), (5), or (7) of RCW 82.04.260 with respect to extracting or manufacturing of the products so sold~~)) be allowed a credit against those taxes for any (a) manufacturing taxes paid with respect to the manufacturing of products so sold in this state, and/or (b) extracting taxes paid with respect to the extracting of products so sold in this state or ingredients of products so sold in this state. Extracting taxes taken as credit under section (3) of this section may also be taken under this subsection, if otherwise allowable under this subsection. The amount of the credit shall not exceed the tax liability arising under this chapter with respect to the sale of those products.

(3) Persons taxable under RCW 82.04.240 or 82.04.260 subsection (4) shall ((~~not be taxable under RCW 82.04.230~~)) be allowed a credit against those taxes for any extracting taxes paid with respect to extracting the ingredients of the products so manufactured in this state. The amount of the credit shall not exceed the tax liability arising under this chapter with respect to the manufacturing of those products.

(4)(((~~(a) If it is determined by a court of competent jurisdiction, in a judgment not subject to review, that subsection (2) of this section results in an unconstitutional discrimination against interstate or foreign commerce, and that relief is appropriate for any tax reporting periods either before or after April 30, 1985, it is the intent of the legislature that the credit provided in (b) of this subsection shall be applied to such reporting periods and that relief for such periods be limited to the granting of such credit. It is further the intent of the legislature that such credit shall be applicable only under the conditions and to the extent provided in this subsection (4):~~

~~(b) As provided in (a) of this subsection,~~)) Persons taxable under RCW 82.04.230, 82.04.240, or subsection (2), (3), (4), (5), or (7) of RCW 82.04.260 with respect to extracting or manufacturing products in this state shall be allowed a credit against those taxes for any (i) gross receipts taxes paid to another state with respect to the sales of the products so extracted or manufactured in this state, (ii) manufacturing taxes paid with respect to the manufacturing of products using ingredients so extracted in this state, or (iii) manufacturing taxes paid with respect to manufacturing activities completed in another state for products so manufactured in this state. The amount of the credit shall not exceed the tax liability arising under this chapter with respect to the extraction or manufacturing of those products.

(((~~(c)~~))) (5) For the purpose of this ((~~subsection,~~)) section:

(a) "Gross receipts tax" means a tax:

(i) Which is imposed on or measured by the gross volume of business, in terms of gross receipts or in other terms, and in the determination of which the deductions allowed would not constitute the tax an income tax or value added tax, and

(ii) Which is also not, pursuant to law or custom, separately stated from the sales price.

(((~~(d) For the purpose of this subsection,~~))) (b) "State" means (i) the state of Washington, (ii) a state of the United States other than Washington, or any political subdivision ((~~thereof, or~~)) of such other state, (iii) the District of Columbia, and (iv) any foreign country or political subdivision thereof.

(c) "Manufacturing tax" means a gross receipts tax imposed on the act or privilege of engaging in business as a manufacturer, and includes (i) the taxes imposed in RCW 82.04.240 and subsections (2), (3), (4), (5), and (7) of RCW 82.04.260, and (ii) similar gross receipts taxes paid to other states.

(d) "Extracting tax" means a gross receipts tax imposed on the act or privilege of engaging in business as an extractor, and includes the tax imposed in RCW 82.04.230 and similar gross receipts taxes paid to other states.

(e) "Business", "manufacturer", "extractor", and other terms used in this section have the meanings given in RCW 82.04.020 through 82.04.212, notwithstanding the use of those terms in the context of describing taxes imposed by other states.

NEW SECTION. Sec. 3. If it is determined by a court of competent jurisdiction, in a judgment not subject to review, that relief is appropriate for any tax reporting periods before the effective date of this act, in respect to RCW 82.04.440 as it existed before the effective date of this act, it is the intent of the legislature that the credits provided in RCW 82.04.440 as amended by section 2 of this act shall be applied to such reporting periods and that relief for such periods be limited to the granting of such credits.

NEW SECTION. Sec. 4. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. Sec. 5. This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect immediately.

Passed the Senate August 10, 1987.

Pass the House August 10, 1987.

Approved by the Governor August 11, 1987.

Filed in Office of Secretary of State August 11, 1987.

1985 WASH. LAWS CH. 190

BUSINESS AND OCCUPATION TAX—CREDIT FOR TAXES PAID TO ANOTHER STATE FOR SALES OF PRODUCTS EXTRACTED OR MANUFACTURED IN-STATE

AN ACT Relating to revenue and taxation; amending RCW 82.04.440, 82.49.010, and 82.49.030; adding a new section to chapter 82.12 RCW; adding a new section to chapter 82.49 RCW; creating a new section; repealing RCW 82.49.040, 82.49.050, and 82.49.060; providing an effective date; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. Section 82.04.440, chapter 15, Laws of 1961 as last amended by section 5, chapter 172, Laws of 1981 and RCW 82.04.440 are each amended to read as follows:

(1) Except as provided in subsections (2) and (3) of this section, every person engaged in activities which are within the purview of the provisions of two or more of sections RCW 82.04.230 to 82.04.290, inclusive, shall be taxable under each paragraph applicable to the activities engaged in((: ~~PROVIDED, That~~)).

(2) Persons taxable under RCW 82.04.250 or 82.04.270 shall not be taxable under RCW 82.04.230, 82.04.240, or subsection (2), (3), (4), (5), or (7) of RCW 82.04.260 with respect to extracting or manufacturing of the products so sold ((~~, and that~~)).

(3) Persons taxable under RCW 82.04.240 or ((~~RCW~~)) 82.04.260 subsection (4) shall not be taxable under RCW 82.04.230 with respect to extracting the ingredients of the products so manufactured.

(4)(a) If it is determined by a court of competent jurisdiction, in a judgment not subject to review, that

subsection (2) of this section results in an unconstitutional discrimination against interstate or foreign commerce, and that relief is appropriate for any tax reporting periods either before or after the effective date of this 1985 act, it is the intent of the legislature that the credit provided in (b) of this subsection shall be applied to such reporting periods and that relief for such periods be limited to the granting of such credit. It is further the intent of the legislature that such credit shall be applicable only under the conditions and to the extent provided in this subsection (4).

(b) As provided in (a) of this subsection, a person taxable under RCW 82.04.230, 82.04.240, or subsection (2), (3), (4), (5), or (7) of RCW 82.04.260 with respect to extracting or manufacturing products in this state shall be allowed a credit against those taxes for any gross receipts taxes paid to another state with respect to the sales of the products so extracted or manufactured in this state. The amount of the credit shall not exceed the tax liability arising under this chapter with respect to the extraction or manufacturing of those products.

(c) For the purpose of this subsection, "gross receipts tax" means a tax:

(i) Which is imposed on or measured by the gross volume of business, in terms of gross receipts or in other terms, and in the determination of which the deductions allowed would not constitute the tax an income tax or value added tax; and

(ii) Which is also not, pursuant to law or custom, separately stated from the sales price.

(d) For the purpose of this subsection, "state" means state of the United States, any political subdivision thereof, or the District of Columbia, and any foreign country or political subdivision thereof.

NEW SECTION. Sec. 8. If any provision of this act or its application to any person or circumstance is held invalid,

the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. Sec. 9. This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect immediately.

Passed the Senate April 28, 1985.

Passed the House April 28, 1985.

Approved by the Governor April 30, 1985, with the exception of certain items which are vetoed.

Filed in Office of Secretary of State April 30, 1985.

WAC 458-20-19301 Multiple activities tax credits. (1) Introduction. Under the provisions of RCW 82.04.440 as amended effective August 12, 1987, Washington state's business and occupation taxes imposed under chapter 82.04 RCW were adjusted to achieve constitutional equality in the tax treatment of persons engaged in intrastate commerce (within this state only) and interstate commerce (between Washington and other states). The business and occupation tax system taxes the privilege of engaging in specified business activities based upon "gross proceeds of sales" (RCW 82.04.070) and the "value of products" (RCW 82.04.450) produced in this state. In order to maintain the integrity of this taxing system, to eliminate the possibility of discrimination between taxpayers, and to provide equal and uniform treatment of persons engaged in extracting, manufacturing, and/or selling activities regardless of where performed, a statutory system of internal and external tax credits was adopted, effective August 12, 1987. This tax credits system replaces the multiple activities exemption which, formerly, assured that the gross receipts tax would be paid only once by persons engaged in more than one taxable activity in this state in connection with the same end products. Unlike the multiple activities exemption which only prevented multiple taxation from within this state, the credits of the new system apply for gross receipts taxes paid to other taxing jurisdictions outside this state as well.

(2) Definitions. For purposes of this section the following terms will apply.

(a) "Credits" means the multiple activities tax credit(s) authorized under this statutory system also referred to as MATC.

(b) "Gross receipts tax" means a tax:

(i) Which is imposed on or measured by the gross volume of business, in terms of gross receipts or in other terms, and in the determination of which the deductions allowed

would not constitute the tax an income tax or value added tax; and

(ii) Which is not, pursuant to law or custom, separately stated from the selling price.

(c) "Extracting tax" means a gross receipts tax imposed on the act or privilege of engaging in business as an extractor, and includes the tax imposed by RCW 82.04.230 (tax on extractors) and similar gross receipts taxes paid to other states.

(d) "Manufacturing tax" means a gross receipts tax imposed on the act or privilege of engaging in business as a manufacturer, and includes:

(i) The taxes imposed in RCW 82.04.240 (tax on manufacturers) and subsections (2) through (5) and (7) of RCW 82.04.260 (tax on special manufacturing activities) and

(ii) Similar gross receipts taxes paid to other states.

The term "manufacturing tax," by nature, includes a gross receipts tax upon the combination of printing and publishing activities when performed by the same person.

(e) "Selling tax" means a gross receipts tax imposed on the act or privilege of engaging in business as a wholesaler or retailer of tangible personal property in this state or any other state. The term "selling" has its common and ordinary meaning and includes the acts of making either wholesale sales or retail sales or both.

(f) "State" means:

(i) The state of Washington,

(ii) A state of the United States other than Washington or any political subdivision of such other state,

(iii) The District of Columbia,

(iv) Territories and possessions of the United States, and

(v) Any foreign country or political subdivision thereof.

(g) "Taxes paid" means taxes legally imposed and actually paid in terms of money, credits, or other emoluments to a taxing authority of any "state." The term does not include taxes for which liability for payment has accrued but for which payment has not actually been made. This term also includes business and occupation taxes being paid to Washington state together with the same combined excise tax return upon which MATC are taken.

(h) "Business," "manufacturer," "extractor," and other terms expressly defined in RCW 82.04.020 through 82.04.212 have the meanings given in those statutory sections regardless of how the terms may be used for other states' taxing purposes.

(3) Scope of credits. This integrated tax credits system is intended to assure that gross receipts from sales or the value of products determined by such gross receipts are taxed only one time, whether the activities occur entirely within this state or both within and outside this state. External tax credits arise when activities are taxed in this state and similar activities with respect to the same products produced and sold are also subject to similar taxes outside this state. There are five ways in which external tax credits may arise because of taxes paid in other states.

(a) Products or ingredients are extracted (taken from the ground) in this state and are manufactured or sold and delivered in another state which imposes a gross receipts tax on the latter activity(s). The credit created by payment of the other state's tax may be used to offset the Washington extracting tax liability.

(b) Products are manufactured, in whole or in part, in this state and sold and delivered in another state which imposes a gross receipts tax on the selling activity. Again, payment of the other state's tax may be taken as a credit against the Washington manufacturing tax liability.

(c) Conversely, products or ingredients are extracted outside this state upon which a gross receipts tax is paid in the state of extracting, and which are sold and delivered to buyers here. The other state tax payment may be taken as a credit against Washington's selling taxes.

(d) Similarly, products are manufactured, in whole or in part outside this state and sold and delivered to buyers here. Any other state's gross receipts tax on manufacturing may be taken as a credit against Washington's selling tax.

(e) Products are partly manufactured in this state and partly in another state and are sold and delivered here or in another state. The combination of all other states' gross receipts taxes paid may be taken as credits against Washington's manufacturing and/or selling taxes.

Thus, the external tax credits may arise in the flow of commerce, either upstream or downstream from the taxable activity in this state, or both. Products extracted in another state, manufactured in Washington state, and sold and delivered in a third state may derive credits for taxes paid on both of the out of state activities.

Internal tax credits arise from multiple business activities performed entirely within this state, all of which are now subject to tax, but with the integrated credits offsetting the liabilities so that tax is only paid once on gross receipts. Under this system Washington extractors and manufacturers who sell their products in this state at wholesale and/or retail must report the value of products or gross receipts under each applicable tax classification. Credits may then be taken in the amount of the extracting and/or manufacturing tax paid to offset the selling taxes due. There are three ways in which credits may arise because of taxes paid exclusively in this state.

(f) Products are extracted in Washington and directly sold in Washington. Extracting business and occupation tax and selling business and occupation tax must both be reported but the payment of the former is a credit against the latter.

(g) Similarly, ingredients are extracted in Washington and manufactured into new products in this state. The extracting business and occupation tax reported and paid may be taken as a credit against manufacturing tax reported.

(h) Products manufactured in Washington are sold in Washington. Again, the payment of the manufacturing tax reported may be credited against the selling tax (wholesaling and/or retailing business and occupation tax) reported.

All of the external and internal tax credits derived from any flow of commerce may be used, repeatedly if necessary, to offset other tax liabilities related to the production and sale of the same products.

(4) Eligibility for taking credits. Statutory law places the following eligibility requirements and limitations upon the MATC system.

(a) The amount of the credit(s), however derived, may not exceed the Washington tax liability against which the credit(s) may be used. Any excess of credit(s) over liability may not be carried over or used for any purpose.

(b) The person claiming the credit(s) must be the same person who is legally obligated to pay both the taxes which give rise to the credit(s) and the taxes against which the credit is claimed. The MATC is not assignable.

(c) The taxes which give rise to the credit(s) must be actually paid before credit may be claimed against any other tax liability. Tax liability merely accrued is not creditable.

(d) The business activity subject to tax, and against which credit(s) is claimed, must involve the same ingredients or product upon which the tax giving rise to the credit(s) was paid. The credits must be product-specific.

(e) The effective date for developing and claiming credit(s) for products manufactured in Washington state and sold and delivered in other states which impose gross receipts selling taxes is June 1, 1987.

(f) The effective date for developing and claiming all credits other than those explained in subsection (e) above, is August 12, 1987.

(g) Persons who are engaged only in making wholesale or retail sales of tangible personal property which they have not extracted or manufactured are not entitled to claim MATC. Also, persons engaged in rendering services in this state are not so entitled, even if such services have been defined as "retail sales" under RCW 82.04.050. (See WAC 458-20-194 for rules governing apportionment of gross receipts from interstate services.)

(5) Other states' qualifying taxes. The law defines "gross receipts tax" paid to other states to exclude income taxes, value added taxes, retail sales taxes, use taxes, or other taxes which are generally stated separately from the selling price of products sold. Only those taxes imposed by other states which include gross receipts of a business activity within their measure or base are qualified for these credit(s). The burden rests with the person claiming any MATC for other states' taxes paid to show that the other states' tax was a tax on gross receipts as defined herein. Gross receipts taxes generally include:

(a) Business and occupation privileges taxes upon extracting, manufacturing, and selling activities which are similar to those imposed in Washington state in that the tax measure or base is not reduced by any allocation, apportionment, or other formulary method resulting in a downward adjustment of the tax base. If costs of doing business may be generally or routinely deducted from the tax base, the tax is not one which is similar to Washington state's gross receipts tax.

(b) Severance taxes measured by the selling price of the ingredients or products severed (oil, logs, minerals, natural products, etc.) rather than measured by costs of production, stumpage values, the volume or number of units produced, or some other formulary tax base.

(c) Business franchise or licensing taxes measured by the gross volume of business in terms of gross receipts or other financial terms rather than units of production or the volume of units sold.

Other states' tax payments claimed for MATC must be identifiable with the same ingredients or products which incurred tax liability in Washington state, i.e., they must be product specific.

(d) The department will periodically publish an excise tax bulletin listing current taxes in other jurisdictions which are either qualified or disqualified for credit under the MATC system.

(6) Deductions in combination with MATC. Effective August 12, 1987, with the enactment of the MATC system, the liability for actual payment of tax by persons who extract, manufacture, and sell products in this state was shifted from the selling activity (wholesaling or retailing) to the production activity (extracting and/or manufacturing). As explained, the payment of the production taxes may now be credited against the liability for selling taxes on the same products. However, the deductions from tax provided by chapter 82.04 RCW (business and occupation tax deductions) may still be taken before tax credits are computed and used, with noted exceptions. In order for the MATC system to result in the correct computation of tax liabilities and credit applications, the tax deductions which may apply for any reporting period must be taken equally against both levels of tax liability reported, i.e., at both the production and selling levels. Failure to report tax deductions in this manner will result in overreporting tax due and may result in overpayment of tax. Thus, with the exceptions noted below, tax deductions formerly reported only against selling activities should now be reported against production activities as well. All such deductions, the result of which is to reduce the measure of tax reported, should be taken against both the production taxes (extracting or

manufacturing) and the selling taxes (wholesaling and/or retailing equally.

(a) Example:

(i) A company manufactures products in Washington which it also sells at wholesale for $5,000 and delivers to a buyer in this state. The buyer defaults on part of the payment and the seller incurs a $2,000 credit loss which it writes off as a bad debt during the tax reporting period. The bad debt deduction provided by RCW 82.04.4284 must be shown on both the manufacturing-other line and the wholesaling-other line of the combined excise tax return. Taking the deduction on only one of those activities results in overreported tax liability on the $2,000 loss.

(b) Exceptions. The deductions generally provided by RCW 82.04.4286, for interstate or foreign sales (where goods are sold and delivered outside this state) may not be taken against tax reported at the production level (extracting or manufacturing). This is because the MATC system itself provides for tax credits instead of tax deductions on gross receipts from transactions involving goods produced in this state and sold in interstate or foreign commerce. Thus, deductions which eliminate transactions from tax reporting may be taken only against selling taxes.

(c) Applicable deductions should be shown on the front of the combined excise tax return (Column #3) on each applicable tax classification line and detailed on the back side of the return, as usual, before MATC is taken.

(d) It is not the intent of the MATC law to invalidate or nullify the business and occupation tax exemption for taxable amounts below minimum (see WAC 458-20-104). Thus any person whose gross receipts or value of products reported under any single tax classification with respect to the production and sale of any product is less than the minimum taxable amount will not incur tax liability merely because of the requirement to report those gross receipts or value of

products on the same product under other tax classifications as well.

(i) Example: A person both manufactures and sells at wholesale $2,000 worth of widgets in the first quarter of a tax year. The requirement to report the $2,000 tax measure under both the manufacturing-other classification and the wholesaling-other classification gives the false appearance of $4,000 in gross receipts during this quarter. However, only the amount reported under the manufacturing-other classification need be considered to determine eligibility for the amount-below-minimum exemption.

(7) How and when to take MATC. The credits available under the MATC system are all to be taken on the combined excise tax return beginning in August, 1987 and thereafter. The return form has been modified to accommodate these credits. Each tax return upon which MATC has been taken must be accompanied by a completed Schedule C. This schedule details the business activities and credits computations. The line by line instructions insure that no more or no less credits are claimed than are authorized under the law.

(8) Consolidation of tax liabilities and credits. Under the MATC system a person's Washington tax liability for all activities involved in that person's production and sale of the same ingredients or products (extracting, and/or manufacturing, and/or selling) is to be reported only at the time of the sale of such products or at the time of that person's own use of such products for commercial or industrial consumption. All of the taxable activities are to be reported on that same periodic excise tax return. Also, all external and internal tax credits derived from the payment of any gross receipts taxes on any of these activities are to be taken at that time. Thus, the taxable activities and the tax credits are procedurally consolidated for reporting. This consolidation generally overcomes any need to track ingredients or products from their extraction to their sale. It also overcomes any need to report and pay Washington tax liability during one reporting period and to take credits against

that tax liability in a different reporting period. Thus, except as noted below, there can be no credit carryovers or carrybacks under this system.

(a) Exception. Where different tax periods are assigned by Washington state and another state to a company doing business both within and outside Washington state, the other state's gross receipts tax on the same products may not yet have been paid when the Washington tax is due for reporting and payment. In such cases the Washington tax due must be timely reported and paid during the period in which the sale is made. The external credit arising later, when the other state's tax is paid, may be taken as a credit against any Washington business and occupation tax reported during that later period. Thus, the limitation that the MATC must be product-specific by being limited to the amount of Washington tax paid on the same products does not mean that the credit(s) can only be used against precisely those same Washington taxes paid.

(i) In the situation described in subsection (a) above, if there is not sufficient Washington business and occupation tax due for payment in the later period, when the external tax credit arises, to allow for utilization of the entire credit, the amount of any overage may be carried forward and taken against Washington taxes reported in subsequent reporting periods until fully used.

When filing such exception returns, the full amount of any credits should be claimed, even though that credit amount will exceed the amount of tax liability reported for that period. The department of revenue itself will make the necessary adjustments and will perform the carrying over of any excess credits into future reporting periods.

(ii) In the same situation, if the person entitled to claim such credit overage is no longer engaged in taxable business in this state or for any other reason does not incur sufficient Washington business and occupation tax liability to fully utilize the perfected credit overage, a tax refund will be issued.

(iii) No tax refunds, MATC carryovers, or MATC carrybacks will be allowed under any circumstances other than those explained above.

(b) Special circumstances may arise where it is not possible to specifically identify ingredients or products as they move from production to sale (e.g., fungible commodities from various sources stored in a common warehouse). In such cases the taxpayer should seek advance approval from the department, in writing, for tax reporting and credit taking on a test period, formulary, or volume percentage basis, subject to audit verification.

(9) Recordkeeping requirements. Persons claiming the MATC must keep and preserve such records and documents as may be necessary to prove their entitlement to any credits taken under this system (RCW 82.32.070). It is not required to submit copies of such proofs when credits are claimed or together with the Schedule C detail. Rather, such records must be kept for a period no less than five years from the date of the tax return upon which the related tax credits are claimed. Such records are fully subject to audit for confirmation of the validity and amounts of credits taken. Records which must be preserved by persons claiming external tax credits include:

(a) Copies of sales contracts, or other written or memorialized evidence of any sales agreements, including purchase and billing invoices showing the origin state and destination state of products sold.

(b) Copies of shipping or other delivery documents identifying the products sold and delivered, reconcilable with the selling documents of subsection (a) above, if appropriate.

(c) Copies of production reports, transfer orders, and similar such documents which will reflect the intercompany or interdepartmental movement of extracted ingredients or manufactured products where no sale has occurred.

(d) Copies of tax returns or reports filed with other states' taxing authorities showing the kinds and amounts of taxes paid to such other states for which MATC is claimed.

(e) Copies of cancelled checks or other proofs of actual tax payment to the other state(s) giving rise to the MATC claimed.

(f) Copies of any other state(s) taxing statutes, laws, ordinances, and other appropriate legal authorities necessary to establish the nature of the other states' tax as a gross receipts tax, as defined in this section.

(g) Failure to keep and preserve proofs of entitlement to the MATC will result in the denial of credits claimed and the assessment of all taxes offset or reduced by such credits as well as the additional assessment of interest and penalties as required by law. (See RCW 82.32.050.)

(10) MATC in combination with other credits. The tax credits authorized under this system may be taken in combination with other tax credits available under Washington law. Such other credit programs, however, authorize credit carryovers from reporting period to period until the credits are fully utilized. Thus, the MATC must be computed and used to offset business and occupation tax liabilities during any tax reporting period before any other program credits to which a claimant may be entitled are claimed or applied. Failure to compute and take the MATC before applying other available credits may result in the loss of the other credit benefits.

(11) Superseding provisions. The MATC provisions of this section supersede and control the provisions of other sections of chapter 458-20 WAC (other tax rules) relating to intrastate, interstate, and foreign transactions to the extent that such provisions are or appear to be contrary or conflicting.

(12) Unique or special credit situations-Appeals. The provisions of this section generally explain the nature of the MATC system and the tax credit qualifications, limitations, and claiming procedures. The complexity of the integrated tax

reporting and credit taking procedures may develop situations or questions which are not addressed herein. Such matters and requests for specialized rulings should be submitted to the department of revenue for prior determination before credits are claimed. Generally, prior determinations will be provided within sixty days after the department receives the information necessary to make such a ruling. Adverse rulings, tax credit denials, or tax assessments resulting from audits or other examinations of returns upon which the MATC is claimed may be administratively appealed under the provisions of chapter 82.32 RCW and WAC 458-20-100.

PETITIONERS THAT LITIGATED IN *TYLER PIPE INDUS., INC. V. WASHINGTON DEP'T OF REV.*, 483 U.S. 232 (1987) WHETHER THE B&O TAXES ON THEIR SELLING ACTIVITIES IN WASHINGTON WERE FAIRLY APPORTIONED.

Allis-Chalmers Corp.
American Cyanamid Co.
American National Can Co.*
Bethlehem Steel Corp.
Chrysler Motors Corp.
Clark Equipment Co.
Ford Motor Co.
G. Heileman Brewing Co.
Honeywell, Inc.
International Paper Co.
Kal Kan, Inc.
Longview Fibre Co.
Mars, Inc.
Reynolds Metals Co.
Scott Paper Co.
Shulton, Inc.
Square D Co.
Uncle Ben's, Inc.
W. R. Grace & Co.
Westinghouse Electric Corp.
Xerox Corp.

*American National Can Co. was formerly known as National Can Corp.

PETITIONERS THAT LITIGATED IN *AMERICAN NAT'L CAN CORP. V. DEPARTMENT OF REV.*, 114 WASH. 2D 236, 787 P.2D 545, *CERT. DENIED*, 498 U.S. 880 (1990) WHETHER THE 1987 TWO-WAY, CREDIT LAW DISCRIMINATES AGAINST INTERSTATE COMMERCE.

Alpac Corp.
American Cyanamid Co.
American National Can Co.
American Passage Marketing Corp.
Anheuser-Busch, Inc.
Apple Computer, Inc.
Bandag, Inc.
Basic American Foods
Bridgestone (U.S.A.), Inc.
Bridgestone/Firestone, Inc.
Brown & Williamson Tobacco Co.
Chrysler Motors Corp.
Clark Equipment Co.
Cooper Industries, Inc.
Cooper Power Systems, Inc.
Down River Forest Products, Inc.
E.I. du Pont de Nemours & Co., Inc.
Eastman Kodak Co.
Edison International, Inc.
Ford Motor Co.
Gerber Food Products Co.
Gerber Products Co.
George A. Hormel & Co.
Herman Miller, Inc.
Hewlett-Packard Co.
Honeywell, Inc.
Hygrade Food Products Corp.
International Paper Co.
Kal Can Foods, Inc.
Kimberly-Clark Corp.
Longview Fibre Co.
Mars, Inc.
McGraw Edison Co. (Area Lighting Division)
McGraw Edison Co. (Bussmann Division)
McGraw Edison Company (Halo Lighting Division)
The Mead Corp.
Murray Pacific Corp.

Noel Canning Corp.
Outboard Marine Corp.
Owens-Corning Fibreglas Corp.
Quinton Investment Co.
Remington Arms Co., Inc.
Reynolds Metals Co.
Scott Paper Co.
Seattle FilmWorks, Inc.
Shields Bag & Printing Co.
Shulton, Inc.
Square D Co.
Sun Sportswear, Inc.
Tektronix, Inc.
Uncle Ben's, Inc.
Welch Foods, Inc.
Western Bottling Co., Inc.
Westinghouse Electric Corp.
W.R. Grace & Co.
Xerox Corp.

IN THE SUPERIOR COURT OF THE STATE
OF WASHINGTON
FOR THURSTON COUNTY

AMERICAN NATIONAL CAN CORPORATION, et al.,	)	
Plaintiffs,	)	NO. 88-2-00680-3
vs.	)	
STATE OF WASHINGTON, DEPARTMENT OF REVENUE, and WILLIAM R. WILKERSON,	)	AFFIDAVIT OF FRED DANG IN RESPECT TO DETERMINATION OF MULTIPLE TAX CREDIT
Defendants.	)	
STATE OF WASHINGTON	)	
	)	ss.
County of Thurston	)	

FRED DANG, having been first duly sworn on oath, deposes and says:

1. I am a Revenue Auditor employed by the Washington State Department of Revenue and have served in that position during the times pertinent to this affidavit. I am over the age of eighteen, competent to testify in this matter, and have personal knowledge of all matters set forth in this affidavit.

2. In 1988 I conducted an excise tax audit of the plaintiff taxpayer identified under the terms of a protective order in this matter as No. 46. The audit of this taxpayer resulted from the Department of Revenue's usual audit

selection process and was conducted for the taxable periods January 1, 1984 through December 31, 1987.

3. During the course of audit I noted that no claim had been made by the taxpayer for the business and occupation multiple activities tax credit (MATC credit) for which the taxpayer might otherwise be eligible for the limited interval July 1, 1987 through December 31, 1987 included in my audit period.

4. In conducting the audit examination I determined that the taxpayer might be entitled to the MATC credit with respect to products manufactured within the state of Washington and which were subjected to selling gross receipts taxes in the states of Indiana and Hawaii.

5. For purposes of confirming the MATC credit allowable to the taxpayer I audited the existing records of the corporation as follows:

(a) I utilized a test period which contained portions of the months of October and November 1987.

(b) I then made reference to the taxpayer's existing records summarizing sales of manufactured products made into the various states including Indiana and Hawaii.

(c) From existing sales invoices and product numbers examined for the test period I determined that 54.65% of the product volume sold into Indiana was produced in Washington. I further determined that the comparable percentage for Hawaii sales from Washington manufacturing sources was 20.62%.

(d) I then calculated the Indiana and Hawaii taxes payable on this apportioned volume of sales within the two states from Washington sources, thereby producing the allowable MATC credit.

6. My audit was conducted by examining records compiled and maintained by the taxpayer for purposes other than the computation of the MATC credit. The MATC credit allowed for the Indiana tax as a result of my audit was $7,211. The credit was allowed for the period June through December 1987. On an annualized basis, this credit closely approximates

what the taxpayer has identified in paragraph 8 of its affidavit, which I have read, as its credit entitlement based upon a review of its "production, distribution and sales system" records. The MATC credit allowed for taxes paid to Hawaii, which are not mentioned in the taxpayer's affidavit, was $810.

/s/ Fred Dang
FRED DANG

SUBSCRIBED AND SWORN TO before me this 19th day of July, 1989.

/s/ LoRay W. Walker
NOTARY PUBLIC in and for the
State of Washington, residing
at Olympia.
My commission expires: 10-1-89

IN THE SUPERIOR COURT OF THE STATE
OF WASHINGTON
FOR THURSTON COUNTY

AMERICAN NATIONAL CAN CORPORATION, et al.,	)	
Plaintiffs,	)	NO. 88-2-00680-3
vs.	)	
STATE OF WASHINGTON, DEPARTMENT OF REVENUE, and WILLIAM R. WILKERSON,	)	AFFIDAVIT OF LES JASTER IN RESPECT TO THE MULTIPLE ACTIVITIES TAX CREDIT
Defendants.	)	
STATE OF WASHINGTON	)	
	)	ss.
County of Thurston	)	

LES JASTER, having been first duly sworn on oath deposes and says:

1. I am a regional audit manager of the Washington State Department of Revenue and previously served as the supervisor of Audit Review for such agency. I am over the age of eighteen, competent to testify in this matter, and have personal knowledge of all matters set forth in this affidavit.

2. I have been employed by the Department of Revenue for approximately twenty-one years.

3. My responsibilities in the position of regional audit manager and supervisor of Audit Review require that I provide advice and instructions to the agency's tax auditors in

the administration and application of the Washington multiple activities credit (hereinafter the "MATC credit") which is allowed as a credit against Washington business and occupation taxes for certain gross receipts taxes paid to other states and jurisdictions. These responsibilities include the giving of similar advice and instructions to auditors in regard to the application of the Department of Revenue's administrative rule (WAC 458-20-19301) which implements the statutory credit.

4. In connection with the above-referenced action I have recently examined affidavits submitted by several of the plaintiffs herein which are generally titled "Affidavit Regarding Potential Claim for the Washington Multiple Activities Credit". Because of the protective order obtained by plaintiffs I am required to identify the corporate taxpayers submitting these affidavits by number rather than by name. I am informed and therefore believe that the court has been provided with an index to identify these taxpayers. The taxpayer affidavits which I have reviewed are as follows;

Taxpayer Nos.	4	15	34	50	64
	10	17	39	52	67
	11	18	46	56	57
	12	23	49	59	72

I have also reviewed the initial affidavits submitted by these taxpayers with the exception of two taxpayers which did not submit such initial affidavits.

5. A substantial number of the affidavits contain the same language which states that based upon the taxpayers' analysis of their production, distribution and sales records they believe themselves to be eligible for MATC credits, in amounts they specifically state, for gross receipts taxes paid to other jurisdictions. Such affidavits, however, proceed to say that the requirements of the law, as administered by the Department of Revenue preclude their claim of the MATC credit because the costs of "identifying, producing and preserving" the documentation required by the Department of Revenue significantly exceed the financial benefit of the credit. Certain

of the affidavits allege, in conclusionary fashion and without detail, the costs that would be incurred in setting up a unique accounting system to be able to claim such credits.

6. The representations contained in these affidavits misconstrue the requirements of the law for claiming credits as the law is administered by the Department of Revenue.

7. The recordkeeping requirements set forth in the Department's administrative rule (WAC 458-20-19301) pertain to records that a taxpayer generates in the ordinary course of business. The rule does not require the independent generation of records for the sole purpose of establishing qualification for the MATC credit.

8. The affidavits submitted by taxpayers further imply that the Department requires the exact tracing of any and all manufactured items from their place of origin to destination before consideration will be given to allowance of tax credit. This is inaccurate.

9. Further, the affidavits suggest that by reference to the records maintained by the taxpayers in the ordinary course of business relating to their production, distribution and sales systems, the taxpayers could calculate an appropriate MATC credit, but the Department's recordkeeping requirements and methods of administering the tax credit would disallow the benefit. This, too, is in error.

10. The Department will utilize records otherwise maintained by the taxpayer which may permit the tracing of goods to determine the movement from point of manufacture or extraction to sale for purposes of confirming the allowable MATC credit. The Department will analyze such records for a given taxpayer agreed upon by the Department and the taxpayer (e.g., one or more months) and apply the results of that test period to the entire audit period.

11. However, where existing or readily obtainable records do not permit the identification of specific products from their places of origin to ultimate destination, the Department is prepared to accept statistical evidence

maintained in the ordinary course of business as confirmation of the taxpayers' entitlement to credit.

12. For example, a manufacturing business can demonstrate from records it otherwise maintains that 10% of the products it manufactures outside of Washington is attributable to jurisdictions that impose a gross receipts manufacturing tax that would qualify as a credit against the tax imposed for sales made to Washington customers. The taxpayer's records further demonstrate that of its total production outside Washington, 5% of the production is sold into Washington. The taxpayer neither generates nor maintains records in the ordinary course of business to establish from which manufacturing sources the Washington products emanated and in what amounts. In such circumstances the Department would deem 10% of the Washington products to have had their origin in that jurisdiction imposing the gross receipts manufacturing tax which may be used as a credit against Washington's selling tax.

13. The administration of the rule in this manner for purposes of the MATC credit is consistent with the adjustments the Department allows in certain comparable situations exemplified by the following:

(a) Bad Debts (RCW 82.04.4284). A company can demonstrate from its existing records that a given percentage of its accounts receivable on a nationwide basis results in bad debts. It can determine from such records what portion of its accounts are generated in Washington, but has no records to demonstrate the exact dollar amount of Washington bad debts. The Department will allow a deduction for bad debts computed by applying the nationwide percentage to the known Washington accounts.

(b) Manufactured and Purchased Products. A Washington manufacturer is required from time to time to supplement its manufactured products by purchasing the same products in order to fulfill its sales commitments. It makes sales within and outside of Washington. If such purchased products are used to fill out-of-state orders, the taxpayer has no

obligation for Washington's selling business and occupation tax. Conversely, a selling tax will be paid on sales made in-state. Correspondingly, manufacturing tax must be paid with respect to products manufactured within the state and used to fill out-of-state orders. The taxpayer maintains no records in the ordinary course of business which show what specific products sold within and outside the state are attributable to the manufacturing and purchasing activities. In the absence of such records, the Department will not disallow an exemption from tax for some part of the out-of-state sale orders which may, in fact, have been filled by purchased products but will deem that result to have taken place by apportioning out-of-state sales by reference to the taxpayer's records of total manufacturing and purchasing activity.

14. The administration of the MATC credit by the Department of Revenue in the manner described in ¶¶ 10-12 of this affidavit is exemplified by recent audits of two plaintiff taxpayers who have filed affidavits concerning the multiple activities credit (taxpayer Nos. 15 and 46). The court is referred to the affidavits of Robert M. Beith and Fred Dang, filed concurrently with this affidavit, which describe the audits of these two taxpayers respectively.

15. Such use of existing records for purposes of supporting and confirming the entitlement to the MATC credits will not in my judgment necessitate the creation of unique and elaborate accounting systems alleged by the taxpayers in their affidavits nor the generation of additional accounting records designed solely for the purposes of establishing entitlement to the credit.

16. Having noted the representations contained in the affidavits of the taxpayers identified in ¶ 4, to the best of my knowledge the Department of Revenue has not required a taxpayer, including any of the plaintiffs, to establish a claim for the MATC credit by the introduction of a new accounting system or the separate development of records which would

require the identification or tracking of specific manufactured or extracted products from their place of origin to destination.

/s/ Les Jaster
LES JASTER

SUBSCRIBED AND SWORN TO before me this 20th day of July, 1989.

/s/ LoRay W. Walker
NOTARY PUBLIC in and for the
State of Washington, residing
at Olympia.

My commission expires: 10-1-89